Office-Supreme Court, U.S.
FILED
JUN 30 1964
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 225

CARLOS CASTRO *et al.*,
PETITIONERS,

v.

CENTRAL AGUIRRE SUGAR COMPANY,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

GINORIS VIZCARRA
720 First Federal Savings Building
Santurce, Puerto Rico
Counsel for Petitioners

Of Counsel:
FRANCISCO APONTE
SARAH TORRES PERALTA

Blanchard Printing Company, Boston, Mass — Law Printers

TABLE OF CONTENTS

	Page
Petition	1
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	3
Statement of Facts	3
Reasons for the Allowance of the Writ	5
Argument	6
A. Coverage of the Act Regarding Hotel and Restaurant Employees	6
B. Coverage of the Act Regarding Hospital Employees	8
Conclusion	14
Appendix A, Opinion of Court of Appeals	15

Table of Citations

Cases

Armour Co. v. *Wantock*, 323 U.S. 126, 130 (1940) 13

Consolidated Timber Co. v. *Womack*, 132 F.2d 101 (9 Cir., 1942) 6

Hanson v. *Lagerstrom*, 133 F.2d 120 (8 Cir., 1943) 6

Hake v. *Ancilla Domini Sisters*, 267 F.2d 96 (7 Cir., 1959) 8, 10

Jaurez v. *Kennecott Copper Corp.*, 225 F.2d 100 (10 Cir., 1955) 8, 9, 10

McComb v. *Factory Stores*, 81 F.Supp. 403 (N.D., Ohio, 1948) 11

Mitchell v. *Anderson*, 235 F.2d 638 (9 Cir., 1955) 7, 13

Miscellaneous

	Page
29 C.F.R. Section 776.18(b)	12
Fair Labor Standards Act	3, 4, 5, 8
Section 3(j)	3, 6, 8
15 F.R. 2925, 2933	12
Rules of the Supreme Court of the United States, 19, 21, 22 and 23	2
28 U.S.C. Section 1254(1)	2
28 U.S.C. 2101(e)	2
29 U.S.C. Section 201 et seq.	3, 4, 5, 8
Section 203(j)	3, 6, 8
2 U.S. Code & Cong. Serv. 1949, pp. 2251-2254, 81st Cong., 1st sess.	11

In the
Supreme Court of the United States

OCTOBER TERM, 1964

No.

CARLOS CASTRO *et al.*,
PETITIONERS,

v.

CENTRAL AGUIRRE SUGAR COMPANY,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioners[1] pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above entitled case on April 8, 1964, which reversed the judgment issued by the United

[1] Petitioners in the instant case are: Carlos Castro, Jr., Angelica Reyes, Santos Cartagena, Miguel Angel Batiz, Castulo Colon, Antonia Bayona, Maximino Baez, Juan Caraballo, Raul Rivera Rivera, Cecilia Reyes, Merida Mangual, Maria Garriga, Vicenta Vazquez, Sara Vega, Marcial Vazquez Rivera, Isabel Colon, Rosario Morales, Felicita Galarza, Georgina Olivencia, Santos Colon Ruiz, Juan Ramon Cruz, Celia Acevedo, Matilde Perez, Micaela Lopez, Olga Rojas, Juana de Jesus.

States District Court for the District of Puerto Rico on June 21, 1963.[2]

Opinion Below

The judgment of the United States District Court for the District of Puerto Rico was made and entered on June 21, 1963, is unreported and is printed in the Certified Copy of Record Appendices at page 40-46. The judgment of the United States Court of Appeals for the First Circuit was issued and entered on April 8, 1964, is unreported, and is printed in the Certified Copy of Record Appendices, pages 87-96, and is also printed in Appendix A hereto, at pages 15-23.

Jurisdiction

The judgment of the United States Court Of Appeals For the First Circuit was entered on April 8, 1964.[3] The jurisdiction of this Honorable Court is invoked under 28 U.S.C. Sections 1254(1) and 2101(e), and this writ is brought in accordance with Rules 19, 21, 22 and 23 of the Rules of this Court.

Questions Presented

1. Are Petitioners' activities in the operation of a hotel and restaurant owned by respondent as part of an integrated industrial complex for the production of raw sugar

[2] This case was originated in the United States District Court For The District of Puerto Rico, case number Civil 221-60, by complaint filed by the Petitioners herein. The decision by the District Court was rendered on June 21, 1963. The Respondent herein appealed to the United States Court of Appeals for the First Circuit in case number 6183, and Petitioners herein also appealed in case number 6192. Both cases were consolidated in the appellate court for purposes of decision. The Petitioners here seek review of the decision rendered by the Circuit Court Of Appeals for the First Circuit only in case No. 6183. Case No. 6192 was dismissed on the basis of mootness.

[3] Certified Copy of Record Appendices, page 96.

for commerce, and engaged in employments not independent of such production, within the coverage of the Fair Labor Standard Act, 29 U.S.C. Section 201, and specifically covered by Section 3(j) of the Act?

II. Are Petitioners' activities in the operation of a hospital owned by respondent as part of an integrated industrial complex for the production of raw sugar for commerce, and engaged in employments not independent of such production, within the coverage of the Fair Labor Standards Act, 29 U.S.C. Section 201, and specifically by Section 3(j) of the Act?

Statute Involved

The statutory provision involved in the instant writ is Section 3(j) of the Fair Labor Standards Act, 29 U.S.C. Section 203(j) which reads as follows:

> "(j). 'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State, and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State."

Statement of Facts

The instant case involves cross-appeals from a judgment entered in the United States District Court For the District of Puerto Rico in an action brought under the Fair Labor

Standards Act of 1938, as amended, 29 U.S.C. 201, et seq., for the recovery of unpaid minimum wages, overtime compensation, and attorney's fees.

The facts were stipulated and the Petitioners, the employees, accept the facts as summarized by the Court of Appeals, which are as follows:

The Central Aguirre Sugar Company, hereinafter referred to as Respondent, is engaged in the processing of sugar cane into raw sugar for interstate commerce at its sugar mill located in Aguirre in the Municipality of Salinas, Puerto Rico. It operates an integrated industrial complex, an affiliated agricultural partnership which is engaged in the planting, cultivation and harvesting of sugar cane ground at respondent's mill; an affiliated railroad company which is engaged in transporting sugar cane, raw sugar and other products, and an affiliated company which manufactures raw sugar from sugar cane. Among its personnel it has a staff of executive, professional and technical men, such as engineers, agronomists, accountants, chemists and superintendents. Since 1931 respondent has operated a hotel-restaurant to provide members of this staff and the public with lodging and board. About 10 per cent of the hotel business is with the general public. Its facilities are not available to any of the non-supervisory, production and maintenance employees of the respondent and its affiliates. The hotel is owned by respondent and not by a separate legal entity, and is operated on a non-profit basis as an independent department. Respondent pays the hotel employees, and the accounting, clerical and stenographic work of the hotel is performed by the respondent's employees. The operation of the hotel is subject to the direction of respondent's president and executive vice-president. There are public hotels and restaurants in the nearby towns of Aguirre, Salinas, Guayama, Santa Isabel and Ponce.

The respondent also owns a hospital, which is not operated by a separate legal entity, but as an independent department whose employees are paid by the respondent. This hospital is operated at a loss made up annually by the respondent. Accounting, stenographic and clerical services are provided by the respondent. The hospital is managed by a medical director who consults with respondent's president and executive vice-president. The hospital was founded in 1931 and provided medical, hospital and surgical services to the employees of the respondent and its affiliated enterprises. These services are provided to respondent's sugar mill employees and their families under a welfare plan provision of a collective bargaining contract signed in 1958. The hospital's services are also used by the general public. There are other hospitals and medical services in the area, including a municipal hospital in Salinas, a public health center in Guayama, and private hospitals in Ponce.

Reasons for the Allowance of the Writ

1. The decision of the Court of Appeals for the First Circuit runs contrary to the coverage provisions and the purpose of the Fair Labor Standards Act, 29 U.S.C. Section 201, hereinafter referred to as the Act, and is in direct conflict with decisions of the 5th and 9th Circuit Courts of Appeals.

2. The said decision presents a problem of critical importance in the administration of the Act which should be finally settled by this Honorable Supreme Court.

Argument

A. Coverage of the Act Regarding Hotel and Restaurant Employees.

The Circuit Court of Appeals for the First Circuit in the instant case decided that under the stipulated facts the activities of the employees of a hotel and restaurant operated by an employer in the business of producing raw sugar for commerce, are not covered by the provisions of Section 3(j) of the Act.

Such decision is in direct conflict with decisions of other Circuit Courts in similar or analogous fact situations, to wit:

In *Consolidated Timber Co.* v. *Womack*, 132 F2d 101 (9 Cir. 1942) the Company, as part of its logging and lumbering business operated a cookhouse available to its employees, to employees of contracting companies and to the general public. The Company employees were not compelled to take their meals at the cookhouse, and the greater proportion of them took their meals elsewhere. The court held the employees of the cookhouse covered by the Act reasoning that these employees were actually assisting the work of loggers by keeping their board close to their place of work plus rendering it easier (perhaps even possible) for the company to maintain proper organization of its loggers by forwarding the food whereby the men were given the strength to pursue their labors.

In *Hinson* v. *Lagerstrom*, 133 F2d 120 (8 Cir. 1943) the employees were engaged in the business of cutting, skidding, and hauling pulpwood for commerce and in connection with this business the employer maintained and operated a cookhouse for the purpose of feeding and boarding the employees. It was the only facility in the neighborhood. The employer advanced the theory that the cookhouse in

the camp was not an indispensable part of his operations and that his main business could be operated without a cookhouse. The employer presented evidence pointing the proximity of hotels at Little Falls and Big Falls, Minnesota, the presence of a highway running part of the camp within 150 feet, and other roads kept open the year round, and that he could use a different method of operation by hiring farmers and shackers instead of the camp method. The court found the activities of the employees of the cookhouse covered, rejecting the employer's suggestions that he could dispense with the operation of the cookhouse, on the basis that "we are confronted with a condition and not a theory."

In *Mitchell v. Anderson*, 235 F2d 638 (9 Cir. 1955) plaintiffs worked on a bunk house and mess hall, adjacent to a mine and operated by an independent contractor pursuant to a contract with a mining company that required the operator to furnish meals to employees at hours suitable for the two shifts worked, and that the food should be wholesome and under the producer's direction. Visitors and guests were served meals at the facility and the producer compensated the cost of these meals to the operator. The trial court found that the occupations of the employees working on the facility were not essential to the producer's production of goods for commerce, since the employees could reasonably have secured board and lodging otherwise than through the mess hall and bunk house facility. The Circuit Court reversed the trial court and held the employees covered. The court stated that the principle was not whether the facilities were absolutely necessary to the operation of the enterprise. The employer's business would continue in operation without the mess hall and the bunk house. However, the facilities were without question needed, and without it the production would have been affected. The employees within the facilities were pursu

ing occupations which were directly essential and closely related to the production of ore for commerce.

The conflicting decisions of the several Circuit Courts of Appeals pose a question of sufficient importance in the administration of the ACT dealing with the distinction between employees working in employments directly essential and closely related to production for commerce as distinguished from same employments undertaken by an employer independently of his productive operations for commerce.

B. COVERAGE OF THE ACT REGARDING HOSPITAL EMPLOYEES:

The Circuit Court of Appeals for the First Circuit held that the activities of the employees of a hospital owned and operated by the respondents, in the business of producing raw sugar for commerce, are excluded from the coverage provision of Section 3(j) of the ACT. These activities in the operation of hospital services are rendered to the higher managerial personnel, and to the sugar mill employees and their families under a welfare plan provision of a collective bargaining contract signed in 1958. Around 20 percent of the hospital's services are also used by the general public.

It is respectfully submitted that the Circuit Court failed in making the distinction between employees working in employments and activities essential and related to production for commerce and activities carried out by an employer independently of his principal productive operations for commerce.

In rejecting this distinction or approach the Court of Appeals mainly relies on *Jones v. Kennecott Copper Corp.*, 225 F.2d 108 (10th Cir. 1955) and *Hale v. Arcilla Domini Sisters*, 267 F.2d 96 (7th. Cir. 1959), both holding that employees' hospital activities were not closely related or directly essential to the production of goods for commerce.

The facts in the *Juarez* case, supra, were as follows: The employer was engaged in commerce in the mining and processing of copper mine at Santa Rita, New Mexico. In connection with this operation it maintained and operated a company-owned hospital.

The trial court found that the maintenance of the hospital was a semi-public operation; that caring for patients consisting of the general public and members of the mining company employees' families constituted approximately 80 percent of its operation, and that only 20 percent of its operation consisted in caring for its employees; that the operation of the hospital was not an integral part of Kennecott's mining business; that all other mining companies operated in the same area as defendant without maintaining hospitals; that Kennecott for some years had planned to discontinue the operation of its hospital and had definite plans to discontinue such operations in the near future; that there were ample hospital facilities in the area to care for defendants' employees and the general public, without the need of maintaining of its hospital at Santa Rita; that the chief surgeon and the other doctors on the staff were paid a salary by the employer, and also were engaged in the independent practice of their profession.

The *Juarez*, *supra*, case is distinguishable on the facts from the case at bar. In that case the court found that the hospital was a semi-public operation. In the present case the facts show that it is another productive enterprise of defendant-appellant's sugar mill production. In *Juarez* only 20 percent of its hospital operation consisted in caring for employees. In the instant case defendant-appellant admits that 80 percent of the services are rendered to its employees, and employees of affiliated concerns. In *Juarez* the operation of the hospital was not an integral part of the employer business. In the case at bar it is an admitted

fact that the hospital is not a separate legal entity and is operated as an integral part of defendant-appellant's business. In *Juarez, supra*, the other mining companies operated without the maintenance of hospital facilities. In this case it is admitted, that at least another sugar factory operates a hospital. In *Juarez, supra*, there were in the near vicinity "adequate" hospital facilities. Although there are hospital facilities in the nearby towns as shown in the admitted facts, we can not reasonably assume, and it will be irrelevant to do so, that these services have been used or are used, or are going to be used in the future. In fact the existence of the welfare plan in the collective bargaining contract negates that possibility. The union has contracted for the services rendered by respondent through collective bargaining.

Juarez, supra, shows that the employer had planned for some years to discontinue the operation of the hospital and had definite plans to discontinue it at the time of the trial. In our case, no claim is made to that effect, and we presume the hospital is going to continue operating in view of the integration of these hospital services with respondent's integrated productive operation and its contractual obligation to furnish these services to the mill employees and their dependents.

Huke, supra, case has no application to the case at bar. In that case the hospital was an eleemosynary hospital, that is, devoted to charity and supported by charity. It was operated as a single independent organization serving the general public, and some employees of several industries located in the area. In the present case the hospital is not operated on a charitable basis. It is not an independent organization, but on the contrary, it is tied to the sugar factory operation. Only an intangible percentage of the services are rendered to the general public, since almost all of its clients are respondent's employees working at

the mill, its managerial personnel, and employees of its related concerns.

The Court of Appeals places strong reliance on the legislative history of the amendment of subsection 3(j) by Congress in 1949. The Court finds support for its ruling in the statement of the Managers on the Part of the House of Representatives, to the effect that "employees engaged in providing residential, eating, or other living facilities for factory workers, are quite clearly not performing any activities that are closely related or directly essential to the production of goods." 2 U.S. Code & Cong. Serv. 1949 p.p. 2251-2254, 81st Cong. 1st. Sess. That statement must be read in conjunction to a prior critical statement to the effect that "Coverage of the Act has also been extended to employees of an independently owned and operated restaurant located in a factory (*McComb* v. *Factory Stores*, 81 F. Supp. 403, ND Ohio 1948)". It was the Congressional intention to reverse the holding in that case.

Reliance is also placed by the Court of Appeals in the interpretations on coverage given by the Administrator of the Wage and Hour Division of the Department of Labor. The opening and pertinent portion of the regulation reads as follows:

> "(b) *Employment not directly essential to production distinguished.* Employees of a producer of goods for commerce are not covered as engaged in such production if they are employed solely in connection with essentially local activities which are undertaken by the employer independently of his productive operations or at most as a dispensable, collateral incident to them and not with a view to any direct function which the activities serve in production."

If the employment is independent of an employer's productive operation, the Administrator will not find coverage in those activities that "provide a convenient means of meeting personal needs of his employees", such as "residential, eating, or other living facilities." Interpretative Bulletin of the General Coverage of the Wage and Hour Provisions of the Fair Labor Standards Act of 1938, as amended, issued May 4, 1950, 29 C.F.R. Section 776.18(b), 15 F.R. 2925, 2933.

The Administrator is concerned with employments in essential local activities undertaken by a producer for commerce independently and without reference to his productive operations for commerce, or at least of such nature that they can be dispensed with, or are incidental, or collateral to production, and not related to serve such production.

The facts in the case at bar show that petitioner's activities are retained by a producer whose main and primary activity is the production of sugar for commerce. Petitioner's employments are not carried independently of such production but is part and parcel of it. Their activities minister requirements of actual production and are dependent for their existence in said production. Petitioner's activities are not in the nature of dispensable undertakings. They relate to the daily needs of the employees, both material and production. They are integral part of their terms and conditions of employment. Nor can they be assimilated to collateral and incidental to production. Quite to the contrary, they are substantial regular activities performed for the bulk of the producer's working force. We submit that Petitioner's activities are not controlled by the Administrator standard exclusions, and that the Court of Appeals erred in so holding.

The Circuit Court in the instant case failed to make the necessary distinction between employments related and

essential to production for commerce and employments undertaken as independent or at least collateral to such production.

The Court of Appeals held that the District Court erred in using the "substantial need" test instead of the orthodox "activities test". The trial court explicitly stated that "it is plaintiff's activities, not the defendant's business, that are conclusive on this point" of coverage. It went further to express that in "cases of workers whose tasks lie without the physical, material production of the goods for commerce, there is no rigid rule to guide the court and each case must be decided on its particular facts and the plaintiff's work must be examined in a frame of reference that includes the entire operation to which his activities are related, and not limited to an inquiry whether his work is necessary or essential to the production of goods, but rather, is there substantial need for it and for defendant's provision for it?" See *Mitchell* v. *Anderson*, 235 F(2) 638.[4]

According to the Court of Appeals when the trial court was asking the "substantial need and defendant provision for it" question, it was addressing to the substantial need of Petitioner's activities to production. But even assuming arguendo that the trial court's expression be susceptible of such interpretation, the approach to the problem by the District Court is correct, for under the stipulated facts of this case it was proper to inquire into the character and purpose of the employer's business and also whether the employer actually operates the accessorial services as a part of an integrated effort for the production of goods for commerce. *Lyons Co.* v. *Wantock*, 32 U.S. 126, 130 (1944).

[4] Certified Copy of Record Appendices, page 12

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

GINÖRIS VIZCARRA
720 First Federal Savings Building
Santurce, Puerto Rico
Counsel for Petitioners

Of Counsel:
FRANCISCO APONTE
SARAH TORRES PERALTA

Appendix A

United States Court of Appeals
For the First Circuit

No. 6183.

CENTRAL AGUIRRE SUGAR CO.,

DEFENDANT, APPELLANT,

v.

CARLOS CASTRO ET AL.,

PLAINTIFFS, APPELLEES;

No. 6192.

CARLOS CASTRO ET AL.,

PLAINTIFFS, APPELLANTS,

v.

CENTRAL AGUIRRE SUGAR CO.,

DEFENDANT, APPELLEE.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO.

Before WOODBURY, *Chief Judge*, and MARIS* and ALDRICH, *Circuit Judges*.

Hector M. Lafitte, with whom *Hartzell, Fernandez & Novas* was on brief, for Central Aguirre Sugar Co.
Francisco Aponte Perez for Carlos Castro et al.

OPINION OF THE COURT.

April 8, 1964.

MARIS, *Circuit Judge*. These are cross-appeals from a judgment entered in the United States District Court for the District of Puerto Rico in an action brought under the

*By special designation.

Fair Labor Standards Act of 1938, as amended, 29 U.S.C.A. 201 et seq., for the recovery of unpaid minimum wages and overtime compensation.[1] The plaintiffs, who worked in a hotel which included a restaurant,[2] and in a hospital[3] both of which were maintained by the defendant Central Aguirre Sugar Co. in the vicinity of its sugar mill in Aguirre, had been paid the local minimum wages applicable to their respective industries.

The facts were stipulated and may be summarized as follows:

The defendant is engaged in the processing of sugar cane into raw sugar for interstate commerce at its sugar mill located in Aguirre in the Municipality of Salinas, Puerto Rico. It operates an integrated industrial complex, an affiliated agricultural partnership which is engaged in the planting, cultivation and harvesting of sugar cane ground at defendant's mill, an affiliated railroad company which is engaged in transporting sugar cane, raw sugar and other products, and an affiliated company which manufactures raw sugar from sugar cane. Among its personnel it has a staff of executive, professional and technical men, such as engineers, agronomists, accountants, chemists and superintendents. Since 1931 defendant has operated a hotel-restaurant to provide members of this staff and the public with lodging and board. About 10% of the hotel business is with the general public. Its facilities are not available to any of the non-supervisory, production and maintenance employees of the defendant and its affiliates. The hotel is owned by defendant, and not by a separate legal entity, and is operated on a nonprofit basis as an independent depart-

[1] The complaint covered a period of 2 years prior to its filing date, September 2, 1960.

[2] The hotel and restaurant employees included waiters, cooks, maids and laundry workers.

[3] The hospital employees included orderlies, laundry workers, kitchen helpers and an auxiliary nurse.

ment. Defendant pays the hotel employees, and the accounting, clerical and stenographic work of the hotel is performed by the defendant's employees. The operation of the hotel is subject to the direction of defendant's president and executive vice president. There are public hotels and restaurants in the nearby towns of Aguirre, Salinas, Guayama, Santa Isabel and Ponce.

The defendant also owns a hospital, which is not operated by a separate legal entity, but as an independent department whose employees are paid by defendant. The hospital is operated at a loss made up annually by the defendant. Accounting, stenographic and clerical services are provided by defendant. The hospital is managed by a medical director who consults with defendant's president and executive vice president. The hospital was founded in 1931 and provides medical, hospital and surgical services to the employees of the defendant and its affiliated enterprises. These services are provided to defendant's sugar mill employees and their families under a welfare plan provision of a collective bargaining contract signed in 1958. The hospital's services are also used by the general public. There are other hospitals and medical services in the area, including a municipal hospital in Salinas, a public health center in Guayama, and private hospitals in Ponce.

The question whether the plaintiffs were engaged in commerce within the meaning of section 3(j) of the Fair Labor Standards Act, as amended, 29 U.S.C.A. § 203(j), was submitted to the district court on the stipulated facts, which included the facts set out in affidavits and answers to interrogatories filed in the case. In an opinion filed September 13, 1962 the district court concluded that the plaintiffs were covered by the Act and, therefore, were entitled to unpaid wages as claimed. Subsequently, hearings were held on plaintiffs' claims for liquidated damages, interest and counsel fees. On June 21, 1963 findings of fact

and conclusions of law were filed and a final judgment was entered which directed the defendant to pay $60,040.62 to listed plaintiffs, plus interest from the date of judgment, together with counsel fees in the amount of $15,000.00. From the judgment thus entered the defendant has appealed, at our docket No. 6183. In its judgment the district court denied the plaintiffs' claim for liquidated damages. The employees of the hospital alone have appealed from that determination, at our docket No. 6192.

The defendant's first contention is that the district court erred in concluding that plaintiffs were engaged in the production of goods for commerce within the meaning of the Fair Labor Standards Act and were, therefore, covered by the minimum wage provisions of the Act. The district court took the view that "the plaintiffs' work must be examined in a frame of reference that includes the entire operation to which his activities are related, and not limited to an inquiry whether his work is necessary or essential to the production of goods, but rather is there substantial need for it and for defendant's provision for it?" The latter question the court answered in the affirmative on the premise that the fact that since 1931 the hotel-restaurant had been maintained for the convenience of defendant's higher echelon personnel and the hospital had been maintained to provide services to defendant's employees and their families in addition to the general public justified the conclusion that both hotel and hospital answered a substantial need for the defendant's enterprises.

We agree with the defendant that the district court applied the wrong test in determining the question whether the plaintiffs are covered by the Act. Section 3(j) of the Act provides in pertinent part:

> "(j) . . . for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing,

> manufacturing, mining, handling, transporting, or in any other manner working on such goods, *or in any closely related process or occupation directly essential to the production thereof, . . .*" [Emphasis supplied] 29 U.S.C.A. § 203(j).

The Act thus requires the plaintiffs to satisfy the court that they are engaged in a closely related process directly essential to the production of goods for commerce, not merely that their activities supply a substantial need of such production. We do not think that the plaintiffs in this case have shown themselves to be thus engaged within the meaning of the Act.

Prior to 1949 subsection 3(j) of the Act contained the language ". . . or in any process or occupation necessary to the production thereof". By the Act of October 26, 1949, c. 736, § 3, 63 Stat. 911, this language was amended to read ". . . or in any closely related process or occupation directly essential to the production thereof". It is clear from the legislative history that by this change Congress sought to eliminate marginal and fringe employees which prior cases had held to be covered by the Act, through providing a more precise and restricted criterion to determine the nature of the relationship which an employee's activities must have to the production of goods in order for him to be regarded as an employee engaged in the production of such goods.[4] In this connection, it was emphasized that "employees engaged in providing residential, eating, or other living facilities for factory workers, are quite clearly not performing any activities that are closely related or directly essential to the production of goods."[5] The Act

---

[4] See statement of majority of Senate conferees on H.R. 5856, 81st Cong., 1st Sess. 1949, 95 Cong. Rec. p. 14874.

[5] Statement of the managers on the part of the House of Representatives on H.R. 5856, H.Rept. No. 1453, 81st Cong. 1st Sess., 2 U.S. Code & Cong. Serv. 1949, pp. 2251, 2254.

ministrator of the Wage and Hour Division of the Department of Labor pointed out that employees are not engaged in work "closely related" and "directly essential" to their employer's production of goods for commerce merely because they "provide a convenient means of meeting personal needs of his employees" who are engaged in the production of goods for commerce for "residential, eating, or other living facilities."[8]

It is true, nonetheless, that there may be cases in which the activities of hotel and restaurant employees provide living facilities for employees directly engaged in the production of goods under circumstances where such facilities are essential to assure continued and efficient production of goods, and are, therefore so "closely related" and "directly essential" to the production of goods as to be covered by the Act. As illustrations of such activities the Administrator of the Wage and Hour Division has referred to "employees like cooks, cookees, and bull cooks in isolated lumber camps or mining camps, where the operation of a cookhouse may in fact be 'closely related' and 'directly essential' or, indeed, indispensable to the production of goods for commerce." As examples the Administrator cited *Consolidated Timber Co.* v. *Womack*, 9 Cir. 1942, 132 F.2d 101, and *Hanson* v. *Lagerstrom*, 8 Cir. 1943, 133 F.2d 129, and the plaintiffs have, in addition, cited *Bush* v. *General Motors Corporation*, 1945, 311 Mich. 705, 19 N.W. 2d 142, and *Mitchell* v. *Anderson*, 9 Cir. 1955, 235 F.2d 638. It is sufficient to say that in each of these cases the circumstances, including the isolated location of the employer's operation and the need to provide facilities for lodging and meals for the production workers if they were to carry on production, were the bases for the finding that the em-

[8] Interpretive Bulletin of the General Coverage of the Wage and Hour Provisions of the Fair Labor Standards Act of 1938, as amended, issued May 4, 1950, 29 C.F.R. § 776.18(b), 15 F.R. 2925, 2955.

ployees of these facilities were covered by the Act. The cases are thus clearly distinguishable from the present case.

A word may be added regarding the case of *Mitchell* v. *Anderson*, 9 Cir. 1955, 235 F.2d 638, since the district court appears to have placed its reliance upon that case in applying the test of "substantial need" to the plaintiffs here. That case involved the coverage of employees of a mess hall and bunk house maintained by the Anaconda Copper Mining Company for the accommodation of some of its male employees in Darwin, an isolated town of less than 150 population located in the Mojave desert of California near the company's Darwin Mine. The mine employed approximately 250 men. Public accommodations in Darwin were meagre. The Court of Appeals appears to have thought, as Circuit Judge Fee insists in his dissenting opinion, that the question to be decided was merely whether there was "substantial need" for the operation of the mess hall and bunk house in carrying on the company's operations. In any event a majority of the court held that these facilities were essential to production and reversed the judgment of the district court which had held the activities of the mess hall and bunk house employees not to be essential and hence outside the coverage of the Act. If, as the dissenting judge insisted, the court in *Mitchell* v. *Anderson* did apply the test of substantial need, the test which the district court applied in the present case, rather than the "closely related" and "directly essential" test of the present law its decision is not controlling. In any event we think that the case, involving as it did facilities needed to maintain production workers at an isolated operation in a sparsely inhabited desert area, is so clearly distinguishable on its facts from the present case as to furnish no support for the decision of the district court here.

In the present case the defendant's hotel-restaurant fa-

cilities were not maintained for the workers in the mill. In fact they were not available for those workers but were maintained solely for the convenience of the higher echelon employees, business guests and invitees and members of the general public. Maintaining the hotel-restaurant doubtless serves as a great convenience to these groups but, as we have pointed out, the statute requires that the facilities must be much more a part of the actual operation of the plant than merely to serve "a convenient means of meeting personal needs." The hotel-restaurant may very well have supplied a "substantial need" as the district court concluded, but we think the stipulated facts preclude a finding that the hotel-restaurant employees are engaged in activities which are closely related to and directly essential to the production by the defendant of goods for commerce. We note in this connection that in all the cases to which we have referred the courts concluded that the production of goods would have been affected if the facilities in question had not been provided. The facts in the present case would not support such a conclusion.

The district court was equally wrong in its conclusion that the hospital employees were covered by the Act because the defendant had a "substantial need" for the hospital service. In *Juarez* v. *Kennecott Copper Corporation*, 1955, 225 F.2d 1[illegible] the Court of Appeals for the Tenth Circuit held that the employees of a hospital owned and operated by the Kennecott Copper Corporation at the rim of its open pit copper mine at Santa Rita, New Mexico, were not within the coverage of the Act. The hospital was operated for the company's employees, the members of their families and the members of the public, only 20% of its operations involving caring for employees. The hospital was independently operated by the company and there were ample other hospital facilities in the area. On these facts both the district court and the court of appeals held that

the hospital employees were not engaged in a closely related process or occupation directly essential of the production of goods in commerce. We think that *Juarez* v. *Kennecott Copper Corporation* is indistinguishable on its facts from the case before us, so far as the defendant's hospital is concerned. See also *Hake* v. *Ancilla Domini Sisters*, 7 Cir. 1959, 267 F.2d 96.

We conclude that neither the employees of the defendant's hotel restaurant nor its hospital employees are engaged in activities so closely related to and directly essential to the production of goods for commerce within the meaning of section 3(j) as to be within the coverage of the Fair Labor Standards Act. The judgment in their favor for $60,040.62 plus interest and counsel fees must accordingly be reversed on this ground. The other grounds urged by the defendant for reversal need, therefore, not be considered. Moreover, since the judgment for the plaintiffs must be reversed in toto the appeal of the hospital-employee plaintiffs, based upon the ground that the district court erred in not awarding them liquidated damages, becomes moot and must accordingly be dismissed.

In No. 6152 the judgment of the district court will be reversed. The appeal in No. 6153 will be dismissed. The parties will bear their own costs.